CF0000066285

C.A. - 702/04 (2)

High Court of Chhattisgarh
BILASPUR
21 AUG 2004
Reg. No. 17
Receipt Clerk
High Court, Bilaspur

DB

APPEAL OF PRISONER Division Bench

No. 179/2004 Name जगलू राम

Father's name भीखू उरांव

Residence ग्रा० लडुआ थाना० शंकरगढ़ Age 45 वर्ष

Sentenced ~~सत्रवाद पं०की० 379/03 धारा-302 भा०दं०सं०~~ On 12-8-2004

Under section आजीवन कारावास जुर्माना by माननीय न्यायालय पंचम अपर सत्र न्यायाधीश एवं डी० अम्बिकापुर
--- 506/- या 1 वर्ष

पत्रोंदेने

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 12-8-04
2. Date of which copy received 14-8-04
3. Date on which appeal sent 19-8-04
4. Whether the prisoner wished to be represented or not ~~Yes~~/No.

No. 179/2004 Name जगलू राम उर्फ भीखू उरांव

Continued in केन्द्रीय Jail अम्बिकापुर

No. 4504 Dated 19-08-04 199

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय रजिस्ट्रार (न्यायिक) उच्च न्यायालय छत्तीसगढ़ बिलासपुर
to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न:- निर्णय प्रतिलिपि 5 पाँच पन्ने।

Superintendent

Superintendent
Central Jail, Ambikapur

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 199

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

XI-HC-78

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .Cr.A..700./04 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra.

CRIMINAL APPEAL No. 700/2004

APPELLANT : Jagtu Ram
S/o Bhikhu Uraon,
Aged about 45 years,
R/o village Ladua,
PoliceStation Shankargarh
District Sarguja

Versus

RESPONDENT : State of Chhattisgarh.

Smt. Indira Tripathi counsel for the accused/appellant.
Shri Akhil Mishra Panel Lawyer for respondent/ State.

Heard on M.Cr.P. No. 2507/2006 for suspension of sentence and grant of bail.

During the course of hearing learned counsel for the parties submitted that the accused is in detention for last about 4 years and the whole case rests on the evidence of two eyewitnesses, therefore, this appeal itself may be decided finally. Thus with the consent of the counsel for the parties the appeal is being heard finally.

P.T.O.

(15) (2)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(ORAL) JUDGMENT
{Dated 14-3-2007}

L.C. Bhadoo,J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 12.8.2004 passed by 5th Additional Sessions Judge (FTC) Ambikapur (Sarguja) in Sessions trial No. 379/2003 whereby he has been held guilty under section 302 of the Indian Penal Code for committing the murder of his brother Pahar Sai and sentenced to undergo imprisonment for life and pay fine of Rs. 500/-, in default of payment of fine to further undergo RI for one year.

2. Case of the prosecution in brief is that on 19.3.2003 PW-3 Mania Bai lodged the FIR Ex. P-2 in Police Station Shankargarh to the effect that on 18.3.2003 at about 4-5 p.m. her husband Pahar Sai went to the house of his elder brother Jagtu for consuming *Hadia* liquor on the occasion Holi festival. When they were consuming liquor, quarrel erupted between them regarding partition of the land and the accused threw her husband on the ground and started beating with hands, fists and stone as a result of which he succumbed to the injuries sustained by him. The incident was witnessed by this witness herself and her daughter namely Nirmala Kujur (PW-2). After registering the case, the Investigating Officer left for the scene of occurrence, conducted inquest on the dead body of Pahar Sai and prepared the inquest report Ex. P-1. He also prepared the site plan Ex. P-4 of the place of occurrence. Blood

P.T.O.

(16) (3)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stained soil and plain soil was taken into possession from the place of occurrence under Ex. P-5, one stone stained with blood was taken into possession under Ex. P-6. All the recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report Ex. P-9 was received. Thereafter, dead body of Pahar Sai was sent for post mortem examination to Primary Health Centre, Shankargarh where Dr. J. Kujur PW-1 conducted the post mortem examination and submitted the report Ex. P-1. In the post mortem report the doctor has opined that the cause of death was haemorrhage due to head injury and injury to the eye ball and the death of homicidal in nature.

3. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Court of Sessions judge Ambikapur from where the Additional Sessions Judge, Ambikapur received the same on transfer for trial.

4. In order to establish the charge against the accused/appellant the prosecution has examined as many as 10 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he has denied the material appearing against him in the prosecution case and pleaded his innocence and false implication in the case.

5. Learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused as mentioned above.

P.T.O.

XI-HC-78

(17) (4)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. We have heard counsel appearing for the parties and perused the material available on record including the impugned judgment of the trial Court.

7. The conviction of the accused/appellant rests on the testimony of the eyewitnesses namely Mania Bai (PW-3) wife of the deceased and Nirmala Kujur (PW-2) daughter of the deceased. PW-2 Nirmala Kujur has stated in her evidence that when she returned to her home at about 6 p.m. after grazing goats, she saw that Jagtu was beating her father with hands and kicks and except this she did not see anything. However, in the cross examination she has admitted that it is correct to say that the fateful day being the day of Holi festival all the villagers including her father had consumed liquor on that day. PW-3 Mania Bai, wife of the deceased has stated in her evidence that on the day of Holi festival at about 4 p.m. Jagtu, Suresh and Barso Bai had attacked her husband with wooden log (Genda) and stone in connection of some land dispute and he was thrown on the ground. Thereafter, she ran away from the place of incident. In the cross examination this witness has also stated that all the villagers had consumed liquor on the date of incident as it was Holi festival on that day. Her husband had also consumed liquor many times on that day. This witness has stated that she had also consumed liquor on that day and she witnessed part of the incident. She did not see the accused attacking her husband with stone as she left to her house along with her child. Thus Ku. Nirmala (PW-2) has stated that she saw the accused attacking her father with hands and kicks whereas

P.T.O.

(18) (5)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

PW-3 Mania Bai has stated that accused Jagtu, Suresh and Barso Bai attacked her husband with stone and wooden log (Genda). In the cross examination she has stated that she had not witnessed the accused attacking her husband with stone.

8. In view of above, the accused cannot be held guilty for commission of offence for the reason that in the first instance this so called eyewitness has stated in the examination in chief that the deceased was attacked by Jagtu, Suresh and Barso Bai but in the cross examination she has stated that she had not witnessed the accused attacking her husband with stone. Similarly, Ku. Nirmala PW-2 has stated in her evidence that the accused assaulted her father with hands and kicks. It has also come in the cross examination of Mania Bai PW-3 that she as well as her husband had consumed liquor on the date of incident. Thus there is no legal and clinching evidence to establish that accused Jagtu was the author of the crime in question and both the witnesses have not stated that they saw the accused attacking the deceased with stone. There is improvement in the evidence of Mania Bai PW-3, therefore, based on this evidence accused cannot be convicted for the commission of offence under section 302 of the IPC.

9. In the result, we are of the considered opinion that the findings of the trial Court convicting the accused/appellant under Section 302 of the IPC and sentencing him under that section cannot be sustained as the same is not based on the legal evidence. Accordingly, the appeal is allowed. Impugned judgment of conviction and sentence is set aside. Accused/appellant stands

P.T.O.

XI-HC-78

(19) (6)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 700/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	acquitted of all the charges levelled against him. It is stated that the appellant is in custody since March 2003. He be set at liberty forthwith if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge